

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 776

Introduced by Assembly Member Mitchell

February 17, 2011

An act to amend Section 11550 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as amended, Mitchell. Controlled substances: unlawful use.

~~Existing law classifies controlled substances into 5 schedules and places the greatest restrictions and penalties on the use those substances placed in Schedule I. Existing law provides that no person shall use~~ use, or be under the influence of, specified controlled substances ~~including a narcotic drug classified in Schedule III, IV, or V, except~~ when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. *Existing law provides that a person convicted of violating this provision is guilty of a misdemeanor punishable by at least 90 days in a county jail. However, under the Substance Abuse and Crime Prevention Act of 2000, or Proposition 36, which was approved by the voters at the November 7, 2000, statewide general election, and amended by the Legislature in 2001 and in 2006, the superior court is required to grant probation with a drug treatment condition to any person convicted of a nonviolent drug possession offense, including a person who is convicted of unlawfully using or being under the influence of a controlled substance. Furthermore, Proposition 36 prohibits incarceration as a condition of probation.*

This bill would delete the above provision requiring incarceration in a county jail for any person convicted of unlawfully using or being under the influence of specified controlled substances, in conformance with Proposition 36.

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11550 of the Health and Safety Code is
2 amended to read:

3 11550. (a) No person shall use, or be under the influence of,
4 any controlled substance that is (1) specified in subdivision (b),
5 (c), or (e) of, or paragraph (1) of subdivision (f) of, Section 11054,
6 specified in paragraph (14), (15), (21), (22), or (23) of subdivision
7 (d) of Section 11054, specified in subdivision (b) or (c) of Section
8 11055, or specified in paragraph (1) or (2) of subdivision (d) or in
9 paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic
10 drug classified in Schedule III, IV, or V, except when administered
11 by or under the direction of a person licensed by the state to
12 dispense, prescribe, or administer controlled substances. It shall
13 be the burden of the defense to show that it comes within the
14 exception. Any person convicted of violating this subdivision is
15 guilty of a misdemeanor ~~and shall be sentenced to serve a term of~~
16 ~~not less than 90 days or more than one year in a county jail. The~~
17 ~~court may place a person convicted under this subdivision on~~
18 ~~probation for a period not to exceed five years and, except as~~
19 ~~provided in subdivision (c), shall in all cases in which probation~~
20 ~~is granted require, as a condition thereof, that the person be~~
21 ~~confined in a county jail for at least 90 days. Other than as provided~~
22 ~~by subdivision (c), in no event shall the court have the power to~~
23 ~~absolve a person who violates this subdivision from the obligation~~
24 ~~of spending at least 90 days in confinement in a county jail.~~

25 (b) Any person who (1) is convicted of violating subdivision
26 (a) when the offense occurred within seven years of that person
27 being convicted of two or more separate violations of that
28 subdivision, and (2) refuses to complete a licensed drug
29 rehabilitation program offered by the court pursuant to subdivision

1 (c), shall be punished by imprisonment in a county jail for not less
2 than 180 days nor more than one year. In no event does the court
3 have the power to absolve a person convicted of a violation of
4 subdivision (a) that is punishable under this subdivision from the
5 obligation of spending at least 180 days in confinement in a county
6 jail unless there are no licensed drug rehabilitation programs
7 reasonably available.

8 For the purpose of this section, a drug rehabilitation program
9 shall not be considered reasonably available unless the person is
10 required to pay no more than the court determines that he or she
11 is reasonably able to pay, in order to participate in the program.

12 (c) The court may, when it would be in the interest of justice,
13 permit any person convicted of a violation of subdivision (a)
14 punishable under subdivision (a) or (b) to complete a licensed drug
15 rehabilitation program in lieu of part or all of the imprisonment in
16 the county jail. As a condition of sentencing, the court may require
17 the offender to pay all or a portion of the drug rehabilitation
18 program.

19 In order to alleviate jail overcrowding and to provide recidivist
20 offenders with a reasonable opportunity to seek rehabilitation
21 pursuant to this subdivision, counties are encouraged to include
22 provisions to augment licensed drug rehabilitation programs in
23 their substance abuse proposals and applications submitted to the
24 state for federal and state drug abuse funds.

25 (d) In addition to any fine assessed under this section, the judge
26 may assess a fine not to exceed seventy dollars (\$70) against any
27 person who violates this section, with the proceeds of this fine to
28 be used in accordance with Section 1463.23 of the Penal Code.
29 The court shall, however, take into consideration the defendant's
30 ability to pay, and no defendant shall be denied probation because
31 of his or her inability to pay the fine permitted under this
32 subdivision.

33 (e) Notwithstanding subdivisions (a) and (b) or any other
34 provision of law, any person who is unlawfully under the influence
35 of cocaine, cocaine base, heroin, methamphetamine, or
36 phencyclidine while in the immediate personal possession of a
37 loaded, operable firearm is guilty of a public offense punishable
38 by imprisonment in a county jail for not exceeding one year or in
39 state prison.

1 As used in this subdivision “immediate personal possession”
2 includes, but is not limited to, the interior passenger compartment
3 of a motor vehicle.

4 (f) Every person who violates subdivision (e) is punishable upon
5 the second and each subsequent conviction by imprisonment in
6 the state prison for two, three, or four years.

7 (g) Nothing in this section prevents deferred entry of judgment
8 or a defendant’s participation in a preguilty plea drug court program
9 under Chapter 2.5 (commencing with Section 1000) of Title 6 of
10 Part 2 of the Penal Code unless the person is charged with violating
11 subdivision (b) or (c) of Section 243 of the Penal Code. A person
12 charged with violating this section by being under the influence
13 of any controlled substance which is specified in paragraph (21),
14 (22), or (23) of subdivision (d) of Section 11054 or in paragraph
15 (3) of subdivision (e) of Section 11055 and with violating either
16 subdivision (b) or (c) of Section 243 of the Penal Code or with a
17 violation of subdivision (e) shall be ineligible for deferred entry
18 of judgment or a preguilty plea drug court program.